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09/960,587	09/21/2001	Kirk W. Skeba	42390P11693	5439

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EXAMINER

GELIN, JEAN ALLAND

ART UNIT

PAPER NUMBER

2617

DATE MAILED: 12/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/960,587

Applicant(s)

SKEBA, KIRK W.

Examiner

Jean A. Gelin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

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DETAILED ACTION

1. In view of the appeal brief filed on 9/14/06, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

Joseph Feild.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

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only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 17-23 are rejected under 35 U.S.C. 102(e) as being anticipated by Watanabe et al. (US 2002/0144134).

Regarding claim 20, Watanabe teaches a method comprising: receiving a request at a server computer to certify a first software-defined radio implemented at a first client computer (specifying the ID and transmitting a downloading request, or selection of software to download corresponds to certify the software to download to the communication device [0058]-[0060]); and transmitting first identification (ID) data corresponding to the first software-defined radio to the first client computer (i.e., server refers to headers or IDs indicator and selects and transmits the software of the requested ID to communication device corresponding to the step of transmitting ID, [0059]-[0060]).

Regarding claim 21, Watanabe further teaches downloading a protocol corresponding with the first software-defined radio (col. 5 line 62 through col. 6 line 2).

Regarding claims 22-23, the claims are rejected for the same reasons as set forth in the rejection of claim 20.

Regarding claims 17-19, they have limitations similar to claims 20 and 22-23, therefore, claims 17-19 are rejected for the same reasons as set forth in the rejection of claims 20 and 22-23.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-4, 7-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watanabe et al. (US 2002/0144134 A1) in view of Meyerson (US 6,976,251).

Regarding claim 1, Watanabe teaches a method comprising: receiving a first identification (ID) at a computer system from a server via a transmission medium (i.e., downloading a list of software to the radio on the basis of header (ID) software ([0058]-[0059] and [0067]); comparing the first ID with a second ID stored at a first analog front end coupled to the computer system (i.e., downloading software of the requested ID, and comparing a resultant code with the added code then use the software [0059]-[0061]).

Watanabe further teaches receiving an ID request and downloading the requested ID corresponding to compare the received ID with ID stored in the server prior to downloading the ID. Furthermore, Watanabe teaches the software has been approved and encrypted in a predetermined agency or approving the software for operation of the radio ([0052] and [0056]-[0059]. But Watanabe fails to specifically teach certifying a first software-defined radio for operation if the first ID matches the second ID.

However, the preceding limitation is known in the art of communications. Meyerson teaches a comparison with updated information and stored is made to determine if the software update should be automatically downloaded and installed (col. 2, line 62 to col. 3, line 24). Meyerson further teaches intelligent update agent compares

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the stored user criticality threshold to the evaluated criticality from block 24 (col. 6, line 63 to col. 7, line 36). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to implement the technique of Meyerson within the system Watanabe in order that the user of the communication device will have the opportunity to set preferences as to what software updates should be automatically installed.

Regarding claim 2, Watanabe in view of Meyerson teaches all the limitations above. Meyerson further teaches disable the first software defined radio when the first identifier does not match the second identifier (i.e., within the selection of which software download based on identification, col. 2, line 24 to col. 3, line 44).

Regarding claim 3, Watanabe in view of Meyerson teaches all the limitations above. Watanabe further teaches to store the first identifier in a memory device (25, figure 2) within the communication device prior to compare the first identifier with the second identifier ([0040]).

Regarding claim 4, Watanabe in view of Meyerson teaches all the limitations above. Watanabe further teaches downloading a protocol corresponding with the first software-defined radio (col. 5 line 62 through col. 6 line 2).

Regarding claim 7, the claimed limitations are rejected for the same reasons as set forth in the rejection of claim because the system of Meyerson periodically restarts program flow to regularly check for the existence of software updates and the system continuously perform the function of comparing information stored in the system and the information received from a server to determine how to update software, which

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inherently include the comparison of IDs to certify or determine the software to be downloaded from the server to the communication device.

Watanabe teaches the communication device and the network gateway capable of using a variety different communication protocols via different networks ([0005] through [0008]) so that one of the ordinary skill in the art would recognize Watanabe is capable of receiving a third identification at the computer system from the server via the transmission medium, comparing the third identification with a fourth identification stored at a second analog front end coupled to the computer system, and certifying a second software-defined radio for operation if the third identification matches the fourth identification, in order to operate at software-defined radio.

Regarding claim 8, the claim limitation is rejected for the same reasons set forth in the rejection of claim 1.

Regarding claim 9, Watanabe discloses an input/output bus coupled to the baseband unit and a network controller coupled to the I/O bus (figures 1-2).

Regarding claim 10, Watanabe teaches to receive the first identifier from a server computer (100, figure 13) via a transmission medium coupled to the network controller ([0059]).

Regarding claim 11, the limitations of the claim are rejected as the same reasons set forth in claim 4.

Regarding claims 12-13, Watanabe discloses the communication device comprising an I/O interface coupled to the I/O bus ([0043]), a DSP coupled to the I/O

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interface ([0043]-[0044]) and a second bus coupled to the DSP ([0043]-[0044]), wherein the communication device further comprises a volatile memory (inherently within the DSP to buffer the processing signal) and a non-volatile memory (i.e., the storage 25) coupled to the DSP ([0038] and [0043]-[0044]).

Regarding claim 14, Watanabe discloses the analog front which obviously comprises analog-digital/digital-analog conversion logic coupled to the second bus ([0038]), modulation logic ([0038], [0055]), a transceiver coupled to the modulation logic and an antenna coupled to the transceiver ([0038], [0055]).

Regarding claim 15, Watanabe teaches a non-volatile memory (25, fig. 2) for storing the second identifier ([0040]).

Regarding claim 16, the limitations of the claim are rejected as the same reasons set forth in claim 7.

6. Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watanabe et al. (US 2002/0144134A1 hereinafter Watanabe) in view of Meyerson as applied in claim 1 above, and further in view of Paulsen et al. (US PAT. 6,055,575 hereinafter Paulsen).

Regarding claims 5-6, the combination of Watanabe and Meyerson differs from the claimed invention in not specifically teaching the first identifier and the wireless protocol being received as a component of a signed manifest so that the protocol at the baseband unit is executed if the manifest is validated. However, Paulsen teaches a virtual private network method for remote user to access a private network having a host to combine data with a header containing information about the protocol of the

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private data network, to encrypt the data and the header as a component of a signed manifest, and to transmit the encrypted data and the header over a secure communications path to the remote client, wherein the protocol is executed if the manifest is authenticated (col. 5 line 55 through col. 8 line 41). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the combination of Watanabe and Meyerson in receiving the first identifier and the wireless protocol as the component of the signed manifest so that the protocol at the baseband unit is executed if the manifest is validated, as per teaching of Paulsen, in order to establish a secure communication in permitting an individual to access the private data network.

Response to Arguments

7. Applicant's arguments with respect to claims 1-23 have been considered but are moot in view of the new ground(s) of rejection.

The Applicant argues in substance that Watanabe fails to disclose a server computer, coupled to the transmission medium, that transmits first identification (ID) data to the first client computer upon receiving a request from the client computer to certify a first software-defined radio implemented at the first client computer. However, the Examiner disagrees with the preceding assertion. Watanabe teaches a technique for providing a software defined radio and an approval system and an approval system to download software radio wherein a server (fig. 13) receives a request from a radio (client computer) to download software on the basis of ID software, upon receiving the

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ID software, the server approves (certifies) the software to be downloaded on the basis of the request. Therefore, Watanabe discloses the server certifies the software-defined radio implanted at the client computer in paragraphs ([0058]-[0065]).

The Applicant argues that a terminal disclaimer will be filed upon resolution of the prior art rejections. Therefore, the double patenting rejection recited in the previous Office Action is maintained.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jean A. Gelin whose telephone number is (571) 272-7842. The examiner can normally be reached on 9:30 AM to 7:00 PM.


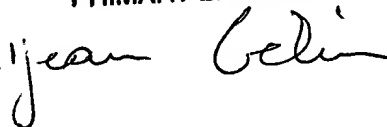
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marsha Banks-Harold can be reached on (571) 272-7905. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JGelin
November 22, 2006

**JEAN GELIN
PRIMARY EXAMINER**



**JOSEPH FEILD
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